

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY ORDER R5-2008-XXXX

MANDATORY PENALTY
IN THE MATTER OF

CITY OF PLACERVILLE
HANGTOWN CREEK WASTEWATER TREATMENT PLANT
EL DORADO COUNTY

This Order is issued to the City of Placerville (hereafter Discharger) pursuant to California Water Code (CWC) section 13385, which authorizes the imposition of Administrative Civil Liability (ACL). This Order is based on findings that the Discharger violated provisions of Waste Discharge Requirements (WDRs) Order 5-01-045 (NPDES No. CA0078956).

The Central Valley Regional Water Quality Control Board (Central Valley Water Board) finds the following:

1. The Discharger owns and operates the Hangtown Creek Wastewater Treatment Plant (WWTP), which provides sewerage service to the City of Placerville and outlying areas in El Dorado County. Treated domestic, commercial and industrial wastewater is discharged to Hangtown Creek, a water of the United States, tributary to Weber Creek and tributary to the South Fork of the American River.
2. On 16 March 2001, the Central Valley Water Board adopted WDRs Order 5-01-045 to regulate discharges of waste from the facility. The WDRs include effluent limitations and other requirements regarding the wastewater discharges. The WDRs also included a time schedule to meet final effluent limitations for turbidity, nitrates, and total coliform organisms by 16 March 2003. On 31 January 2003, the Central Valley Water Board amended the WDRs to extend the time schedule to meet the final limitations until 16 March 2006.
3. The Discharger experienced delays in completing construction of the new WWTP due to a temporary suspension of funding from the State Revolving Loan Fund. Construction started in March 2006, and is now anticipated to be completed by 28 February 2009.
4. On 25 April 2008, the Central Valley Water Board adopted WDRs Order R5-2008-0053, which contained new requirements and rescinded WDRs Order 5-01-045. The WDRs include effluent limitations and other requirements regarding the waste discharges. The Central Valley Water Board also adopted Cease and Desist Order (CDO) R5-2008-0054, which includes a time schedule until 1 June 2009 to comply with final effluent limitations in Section IV.A.1.a. for total nitrate plus nitrite, Section IV.A.1.e.i. and ii. for turbidity, and Section IV.A.1.f.i. for total coliform organisms. This Complaint only concerns effluent limit violations of WDRs Order No. 5-01-045.

5. On 26 October 2007, the Central Valley Water Board sent the Discharger a draft Record of Violations (ROV) covering the time period from 1 January 2001 through 31 July 2007. The Discharger responded by letter dated 30 November 2007. The Discharger did not present evidence that the violations were inaccurate, but instead provided an explanation for the construction delays, as discussed in Finding 3, and provided information in support of a request to be considered a small community with a financial hardship. This Order extends the violations through 31 December 2007.

6. CWC sections 13385(h) and (i) require assessment of mandatory penalties and state, in part, the following:

CWC section 13385(h)(1) states, "Notwithstanding any other provision of this division, and except as provided in subdivisions (j), (k), and (l), a mandatory minimum penalty of three thousand dollars (\$3,000) shall be assessed for each serious violation."

CWC section 13385 (h)(2) states, "For the purposes of this section, a 'serious violation' means any waste discharge that violates the effluent limitations contained in the applicable waste discharge requirements for a Group II pollutant, as specified in Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations, by 20 percent or more or for a Group I pollutant, as specified in Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations, by 40 percent or more."

CWC section 13385(i)(1) states, "Notwithstanding any other provision of this division, and except as provided in subdivisions (j), (k), and (l), a mandatory minimum penalty of three thousand dollars (\$3,000) shall be assessed for each violation whenever the person does any of the following four or more times in any period of six consecutive months, except that the requirement to assess the mandatory minimum penalty shall not be applicable to the first three violations:

- A) Violates a waste discharge requirement effluent limitation.*
- B) Fails to file a report pursuant to Section 13260.*
- C) Files an incomplete report pursuant to Section 13260.*
- D) Violates a toxicity effluent limitation contained in the applicable waste discharge requirements where the waste discharge requirements do not contain pollutant-specific effluent limitations for toxic pollutants."*

7. CWC section 13323 states, in part: *"Any executive officer of a regional board may issue a complaint to any person on whom administrative civil liability may be imposed pursuant to this article. The complaint shall allege the act or failure to act that constitutes a violation of law, the provision authorizing civil liability to be imposed pursuant to this article, and the proposed civil liability."*
8. The Executive Officer previously issued Administrative Civil Liability Complaint (ACLC) R5-2001-0509 for mandatory penalties for effluent limitation violations from 1 January 2000 to 31 December 2000 in the amount of \$9,000. The Central Valley Water

Board has accepted payment from the Discharger of the penalty associated with ACLC R5-2001-0509, and considers this prior matter resolved.

9. WDRs Order 5-01-045 Effluent Limitations No. B.1. include, in part, the following effluent limitations:

<u>Constituent</u>	<u>Unit</u>	<u>Monthly Average</u>	<u>Weekly Average</u>	<u>Daily Average</u>	<u>Daily Maximum</u>
Nitrate ⁴	mg-N/L	10	--	--	--
Settleable Solids	mL/L	0.1	--	--	0.2
Turbidity ⁴	NTU	--	--	2	5

⁴ Effluent Limitations for nitrates and turbidity are not in effect until 16 March 2006. See Provision G.5 for details.

<u>Constituent</u>	<u>Unit</u>	<u>1-Hour Median</u>	<u>4-Day Average</u>	<u>7-Day Median¹</u>	<u>Daily Maximum</u>
Chlorine	mg/L	0.02	0.01	--	--
Total Coliform	MPN/100mL	--	--	2.2	23

¹ 7-Day Median based on previous seven daily sample results. The Effluent Limitation 7-Day Median is not in effect until 16 March 2003. See Provision G.5. for details. A 30-Day Median of 2.2 MPN/100 mL will apply until the 7-Day median limit takes effect.

10. WDRs Order 5-01-045 Effluent Limitations No. B.4. states that: *"The discharge shall not have a pH less than 6.5 nor greater than 8.5."*
11. According to the Discharger's self-monitoring reports, the Discharger committed twenty-six (26) serious Group I violations of the above effluent limitations contained in Order 5-01-045 during the period beginning 1 January 2001 and ending 31 December 2007. The violations are defined as serious because measured concentrations of Group I constituents exceeded maximum prescribed levels by more than 40 percent on these occasions. The mandatory minimum penalty for these serious violations is **seventy-eight thousand dollars (\$78,000)**.
12. According to the Discharger's self-monitoring reports, the Discharger committed two (2) serious Group II violations of the above effluent limitations contained in Order 5-01-045 during the period beginning 1 January 2001 and ending 31 December 2007. The violations are defined as serious because measured concentrations of Group II constituents exceeded maximum prescribed levels by more than 20 percent on these occasions. The mandatory minimum penalty for these serious violations is **six thousand dollars (\$6,000)**.
13. According to the Discharger's self-monitoring reports, the Discharger committed seventy-three (73) non-serious violations of the above effluent limitations contained in Order 5-01-045 during the period beginning 1 January 2001 and ending 31 December 2007. Sixty-two (62) of the non-serious violations are subject to mandatory penalties under CWC section 13385(i)(1) because these violations were preceded by three or more

similar violations within a six-month period. The mandatory minimum penalty for these non-serious violations is **one hundred eighty-six thousand dollars (\$186,000)**.

14. The total amount of the mandatory penalties assessed for the cited effluent violations is **two hundred seventy thousand dollars (\$270,000)**. A detailed list of the cited effluent violations is included in Attachment A, a part of this Order.
15. CWC section 13385 (k)(1) states, in part: *"In lieu of assessing all or a portion of the mandatory minimum penalties pursuant to subdivisions (h) and (i) against a publicly owned treatment works serving a small community, the state board or the regional board may elect to require the publicly owned treatment works to spend an equivalent amount towards the completion of a compliance project proposed by the publicly owned treatment works..."*
16. CWC section 13385 (k)(2) states, in part: *"For the purposes of this subdivision, 'a publicly owned treatment works serving a small community' means a publicly owned treatment works serving a population of 10,000 persons or fewer or a rural county, with a financial hardship as determined by the state board after considering such factors as median income of the residents, rate of unemployment, or low population density in the service area of the publicly owned treatment works."*
17. Staff at the State Water Resources Control Board has determined that the City of Placerville's Hangtown Creek Wastewater Treatment Plant does not meet the definition of a publicly owned treatment works serving a small community because the population in the service area was greater than 10,000 during the time when the violations occurred. Therefore, this Order does not allow the City to complete a compliance project in lieu of assessing mandatory minimum penalties. The determination letter and a subsequent memo are included as Attachment B, a part of this Order.
18. On 5 May 2008, the Assistant Executive Officer issued ACLC R5-2008-0522, assessing \$270,000 in mandatory minimum penalties against the Discharger. The Discharger did not pay the penalty and asked that the matter be heard before the Central Valley Water Board. The Discharger waived its right to a hearing within 90 days.
19. While CWC sections 13385(h) and (i) sets the minimum penalty that may be assessed by the Board for the violations cited herein, the Board may make an upward departure from the minimum penalty up to a maximum amount set by CWC sections 13385(c) and (e). These sections state:

"(c) Civil liability may be imposed administratively by the state board or a regional board pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 in an amount not to exceed the sum of both of the following:
(1) Ten thousand dollars (\$10,000) for each day in which the violation occurs.
(2) Where there is a discharge, any portion of which is not susceptible to cleanup or is not cleaned up, and the volume discharged but not cleaned up exceeds 1,000 gallons, an

additional liability not to exceed ten dollars (\$10) multiplied by the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons”

“(e) In determining the amount of any liability imposed under this section, the regional board, the state board, or the superior court, as the case may be, shall take into account the nature, circumstances, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on its ability to continue its business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters that justice may require. At a minimum, liability shall be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation.”

20. Central Valley Water Board staff has estimated the potential maximum civil liability pursuant to CWC section 13385(c)(1), by applying the \$10,000/day penalty for each of the 91 days that violations were reported. The maximum penalty pursuant to this code subsection is \$910,000. In addition, as discussed above, an alternate maximum penalty of \$10 per gallon discharged over 1,000 gallons could be assessed for each day of violation. This figure was not calculated, but calculating the penalty in this manner is estimated to result in a penalty that would be significantly higher than \$910,000. This Order does not propose to assess a discretionary penalty above the minimum required by CWC sections 13385(h) and (i), because the Discharger reasonably pursued funding and constructing its new wastewater treatment plant.
21. Issuance of this Administrative Civil Liability Order to enforce CWC Division 7, Chapter 5.5 is exempt from the provisions of the California Environmental Quality Act (Pub. Resources Code section 21000 et seq.), in accordance with California Code of Regulations, title 14, section 15321(a)(2).
22. Any person aggrieved by this action of the Central Valley Water Board may petition the State Water Board to review the action in accordance with CWC section 13320 and California Code of Regulations, title 23, sections 2050 and following. The State Water Board must receive the petition by 5:00 p.m., 30 days after the date that this tentative Order becomes final, except that if the thirtieth day following the date that this tentative Order becomes final falls on a Saturday, Sunday, or state holiday, the petition must be received by the State Water Board by 5:00 p.m. on the next business day. This tentative Order is set to become final on 10 September 2008. Copies of the law and regulations applicable to filing petitions may be found on the Internet at: http://www.waterboards.ca.gov/public_notices/petitions/water_quality or will be provided upon request.

IT IS HEREBY ORDERED THAT:

1. Administrative Civil Liability Complaint R5-2008-0522 is rescinded.

2. The City of Placerville shall be assessed an Administrative Civil Liability in the amount of **two hundred seventy thousand dollars (\$270,000)** as follows:

Within 30 days of adoption of this Order, the Discharger shall pay two hundred and seventy thousand dollars (\$270,000) by check made payable to the *State Water Pollution Cleanup and Abatement Account*. The check shall have written on it the number of this ACL Order.

I, Pamela C. Creedon, Executive Officer, do hereby certify the foregoing is a full, true, and correct copy of an Order adopted by the Central Valley Regional Water Quality Control Board, on_____.

PAMELA C. CREEDON, Executive Officer

Attachment A: Record of Violations

Attachment B: Small Community Determination Letter and memo

Attachment A
ADMINISTRATIVE CIVIL LIABILITY ORDER R5-2008-XXXX

City of Placerville
Hangtown Creek Wastewater Treatment Plant

RECORD OF VIOLATIONS (1 January 2001 – 31 December 2007) MANDATORY PENALTIES
(Data reported under Monitoring and Reporting Program 5-01-045)

	<u>Date</u>	<u>Violation Type</u>	<u>Units</u>	<u>Limit</u>	<u>Result</u>	<u>Period Type</u>	<u>Remarks</u>
1	5-Nov-02	Coliform	MPN/100mL	23	50	Daily	3
2	24-Apr-03	Coliform	MPN/100mL	23	70	Daily	3
3	27-Apr-03	Coliform	MPN/100mL	23	110	Daily	3
4	12-Sep-03	Coliform	MPN/100mL	23	50	Daily	3
5	11-Nov-03	Coliform	MPN/100mL	23	30	Daily	3
6	14-Nov-03	Coliform	MPN/100mL	23	50	Daily	3
7	9-Dec-04	Coliform	MPN/100mL	23	30	Daily	3
8	9-Feb-05	Chlorine Res.	mg/L	0.02	3.4	1-hour	2
9	24-Mar-05	Coliform	MPN/100mL	23	30	Daily	3
10	7-Apr-05	pH	pH units	6.5	6.3	Instantaneous	4
11	9-May-05	Coliform	MPN/100mL	23	50	Daily	4
12	27-Oct-05	Coliform	MPN/100mL	23	80	Daily	3
13	19-Dec-05	Coliform	MPN/100mL	23	110	Daily	3
14	26-Dec-05	Coliform	MPN/100mL	23	90	Daily	3
15	28-Dec-05	Coliform	MPN/100mL	23	30	Daily	4
16	29-Dec-05	Coliform	MPN/100mL	23	80	Daily	4
17	4-Jan-06	Coliform	MPN/100mL	23	50	Daily	4
18	1-Mar-06	Coliform	MPN/100mL	23	80	Daily	4
19	3-Apr-06	Turbidity	NTU	2	3	Daily	1
20	5-Apr-06	Settleable Sol.	mL/L	0.2	1	Daily	1
21	6-Apr-06	Turbidity	NTU	2	70	Daily	1
22	6-Apr-06	Turbidity	NTU	5	70	Daily Max	1
23	6-Apr-06	Turbidity	NTU	5	70	Daily Max	1
24	8-Apr-06	Coliform	MPN/100mL	2.2	4	7-day median	4
25	6-May-06	Chlorine Res.	mg/L	0.02	0.56	1-hour	2
26	23-May-06	Settleable Sol.	mL/L	0.2	0.3	Daily	1
27	3-Aug-06	pH	pH units	6.5	6.3	Instantaneous	4
28	1-Nov-06	Coliform	MPN/100mL	2.2	4	7-day median	4
29	2-Nov-06	Coliform	MPN/100mL	2.2	4	7-day median	4
30	3-Nov-06	Coliform	MPN/100mL	2.2	8	7-day median	4
31	6-Nov-06	Coliform	MPN/100mL	2.2	8	7-day median	4
32	7-Nov-06	Coliform	MPN/100mL	2.2	8	7-day median	4
33	8-Nov-06	Coliform	MPN/100mL	2.2	8	7-day median	4
34	9-Nov-06	Coliform	MPN/100mL	2.2	8	7-day median	4
35	14-Nov-06	Coliform	MPN/100mL	2.2	13	7-day median	4
36	16-Nov-06	Coliform	MPN/100mL	2.2	13	7-day median	4
37	16-Nov-06	Coliform	MPN/100mL	23	300	Daily	4

ATTACHMENT A
CITY OF PLACERVILLE
ADMINISTRATIVE CIVIL LIABILITY ORDER R5-2008-XXXX

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	<u>Date</u>	<u>Violation Type</u>	<u>Units</u>	<u>Limit</u>	<u>Result</u>	<u>Period Type</u>	<u>Remarks</u>
38	17-Nov-06	Coliform	MPN/100mL	2.2	13	7-day median	4
39	20-Nov-06	Coliform	MPN/100mL	2.2	7	7-day median	4
40	21-Nov-06	Coliform	MPN/100mL	2.2	7	7-day median	4
41	21-Nov-06	Coliform	MPN/100mL	23	70	Daily	4
42	22-Nov-06	Coliform	MPN/100mL	2.2	30	7-day median	4
43	22-Nov-06	Coliform	MPN/100mL	23	30	Daily	4
44	23-Nov-06	Coliform	MPN/100mL	2.2	7	7-day median	4
45	24-Nov-06	Coliform	MPN/100mL	2.2	17	7-day median	4
46	27-Nov-06	Coliform	MPN/100mL	2.2	17	7-day median	4
47	30-Nov-06	Nitrate	mg/L	10	14	Monthly	1
48	6-Dec-06	Turbidity	NTU	2	4	Daily	1
49	8-Dec-06	Turbidity	NTU	2	3	Daily	1
50	14-Dec-06	Turbidity	NTU	2	3	Daily	1
51	30-Dec-06	Nitrate	mg/L	10	10	Monthly	4
52	19-Jan-07	Coliform	MPN/100mL	23	220	Daily	4
53	22-Jan-07	Coliform	MPN/100mL	23	50	Daily	4
54	23-Jan-07	Coliform	MPN/100mL	2.2	17	7-day median	4
55	24-Jan-07	Turbidity	NTU	2	4	Daily	1
56	25-Jan-07	Coliform	MPN/100mL	2.2	33.5	7-day median	4
57	26-Jan-07	Coliform	MPN/100mL	2.2	10.5	7-day median	4
58	27-Jan-07	Coliform	MPN/100mL	2.2	17	7-day median	4
59	27-Jan-07	Coliform	MPN/100mL	23	50	Daily	4
60	29-Jan-07	Coliform	MPN/100mL	2.2	4	7-day median	4
61	30-Jan-07	Nitrate	mg/L	10	14	Monthly	4
62	26-Feb-07	Turbidity	NTU	2	3	Daily	1
63	27-Feb-07	Coliform	MPN/100mL	23	30	Daily	4
64	30-Mar-07	Coliform	MPN/100mL	23	30	Daily	4
65	3-May-07	Turbidity	NTU	2	3	Daily	1
66	7-May-07	Turbidity	NTU	2	3	Daily	1
67	10-May-07	Turbidity	NTU	2	3	Daily	1
68	17-May-07	Turbidity	NTU	2	3	Daily	1
69	25-May-07	Turbidity	NTU	2	3	Daily	1
70	7-Jun-07	Turbidity	NTU	2	4	Daily	1
71	9-Jun-07	Turbidity	NTU	2	3	Daily	1
72	10-Jun-07	Turbidity	NTU	2	3	Daily	1
73	20-Jun-07	Turbidity	NTU	2	13	Daily	1
74	20-Jun-07	Turbidity	NTU	5	13	Daily Max	1
75	25-Jun-07	Coliform	MPN/100mL	23	130	Daily	4

	<u>Date</u>	<u>Violation Type</u>	<u>Units</u>	<u>Limit</u>	<u>Result</u>	<u>Period Type</u>	<u>Remarks</u>
76	29-Jun-07	Coliform	MPN/100mL	2.2	4.5	7-day median	4
77	30-Jun-07	Nitrate	mg/L	10	14	Monthly	1
78	31-Jul-07	Nitrate	mg/L	10	17	Monthly	1
79	7-Sep-07	Coliform	MPN/100mL	23	30	Daily	4
80	30-Sep-07	Nitrate	mg/L	10	18	Monthly	1
81	8-Oct-07	Coliform	MPN/100mL	2.2	9	7-day median	4
82	8-Oct-07	Coliform	MPN/100mL	23	130	Daily	4
83	9-Oct-07	Coliform	MPN/100mL	2.2	9	7-day median	4
84	10-Oct-07	Coliform	MPN/100mL	2.2	9	7-day median	4
85	11-Oct-07	Coliform	MPN/100mL	2.2	13	7-day median	4
86	11-Oct-07	Coliform	MPN/100mL	23	240	Daily	4
87	12-Oct-07	Coliform	MPN/100mL	2.2	130	7-day median	4
88	12-Oct-07	Coliform	MPN/100mL	23	240	Daily	4
89	15-Oct-07	Coliform	MPN/100mL	2.2	8	7-day median	4
90	16-Oct-07	Coliform	MPN/100mL	2.2	8	7-day median	4
91	17-Oct-07	Coliform	MPN/100mL	2.2	8	7-day median	4
92	18-Oct-07	Coliform	MPN/100mL	2.2	4	7-day median	4
93	31-Oct-07	Nitrate	mg/L	10	18	Monthly	1
94	8-Nov-07	Coliform	MPN/100mL	2.2	4	7-day median	4
95	9-Nov-07	Coliform	MPN/100mL	2.2	4	7-day median	4
96	30-Nov-07	Nitrate	mg/L	10	13	Monthly	4
97	10-Dec-07	Coliform	MPN/100mL	2.2	4	7-day median	4
98	11-Dec-07	Coliform	MPN/100mL	2.2	4	7-day median	4
99	12-Dec-07	Coliform	MPN/100mL	2.2	4	7-day median	4
100	13-Dec-07	Coliform	MPN/100mL	2.2	4	7-day	4
101	31-Dec-07	Nitrate	mg/L	10	12	Monthly	4

Remarks:

1. Serious Violation: For Group 1 pollutants that exceed the effluent limitation by 40 percent or more.
2. Serious Violation: For Group 2 pollutants that exceed the effluent limitation by 20 percent or more.
3. Non-serious violations falls within the first three violations in a six-month period, thus is exempt.
4. Non-serious violation subject to mandatory penalties.

<u>VIOLATIONS AS OF:</u>	<u>12/31/2007</u>
Group 1 Serious Violations:	26
Group 2 Serious Violations:	2
Non-Serious Exempt from MPs:	11
Non-serious Violations Subject to MPs:	62
<u>Total Violations Subject to MMPs:</u>	<u>90</u>

Mandatory Minimum Penalty = (28 Serious Violations + 62 Non-Serious Violations) x \$3,000 = \$270,000